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HOUSE REPUBLICAN CONFERENCE
CHAIRMAN ADAM PUTNAM WASHINGTON D.C. 226-2302

H.R. 2761 - Terrorism Risk Insurance Revision and Extension Act of 2007

EXECUTIVE SUMMARY

H.R. 2761 would extend TRIA for 15 years (until December 31, 2022) and adds coverage for domestic terrorism and group life, while eliminating the exclusion of farm owners multiple peril insurance from the definition of property casualty insurance. The bill also requires private insurers to include NBCR coverage with an exemption for small insurers.

The legislation lowers deductibles, allows insurers to participate in a voluntary buy-down fund to lower insurers' liability for deductible and co-shares after an event, and prohibits life insurance companies from denying or reducing coverage based on future foreign travel except under specified conditions.

Treasury is authorized to require full taxpayer payback following an event or submit a report to Congress explaining why full recoupment is not appropriate. All dollar amounts will be adjusted annually for inflation and Treasury will submit a report to and testify in front of Congress every 2 years. A 21 member blue-ribbon commission is also created to propose long-term solutions to covering terrorism risk and will report at 5 years and 8 years.

According to the Statement of Administration Policy, "the Administration has set forth three critical elements that are necessary for there to be an acceptable extension of TRIA: (1) the Program should be temporary and short-term; (2) there should be no expansion of the Program; and (3) private sector retentions should be increased." However, the Administration's analysis raises concerns that "H.R. 2761 effectively makes TRIA permanent, increases the role of the Federal government, and expands the scope of coverage well beyond the point where it is needed." The President's senior advisors "would recommend that he veto the bill" if the legislation was presented.

In order to comply with PAYGO rules, Democrats included a self-executing amendment in the rule that would require the House and Senate pass a joint resolution to fund compensation after a terrorist attack. Republicans have expressed concerns that these provisions to avoid PAYGO runs counter to the intent of the legislation, which was to provide a federal backstop, not a requirement to seek additional certifications from Congress.

FLOOR SITUATION
H.R. 2761 is being considered on the floor pursuant to a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Republican Member of the Financial Services Committee.

- Waives all points of order against consideration of the bill except those arising under clause 9 (earmarks) and 10 (PAYGO) of Rule XXI.

- Provides that the amendment in the nature of a substitute recommended by the Financial Services Committee, modified by the self-enacting amendment printed in Part A of the Rules Committee report, shall be considered as adopted in the House and in the Committee of the Whole. The bill as amended shall be considered as an original bill for the purposes of further amendment.

- Makes in order only those amendments printed in Part B of the Rules Committee report.

- Provides one motion to recommit with or without instructions.

- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

Representative Michael Capuano (D-MA) introduced the Terrorism Risk Insurance Revision and Extension Act of 2007 (H.R. 2761) on June 18, 2007. The bill, as amended, was approved by the Financial Services Committee on August 1, 2007, by a vote of 49 to 20.

The bill is expected to be considered on the floor on September 19, 2007.

BACKGROUND
Following the events of September 11, 2001, many businesses were no longer able to purchase insurance protecting against property losses that may occur in future terrorist attacks, as insurers started excluding this coverage from their policies. Addressing this problem, the 107th Congress passed H.R. 3210, the Terrorism Risk Insurance Act of 2002 (TRIA), by a vote of 227-193 (Roll no. 464) and it became Public Law No: 107-297.

	AYES	NOES	PRES	NV
REPUBLICAN	207	9		4
DEMOCRATIC	19	183		9
INDEPENDENT	1	1		
TOTALS	**227**	**193**		**13**

H.R. 3210 created a temporary three-year program to share future insured terrorism losses with the property-casualty insurance industry and commercial policyholders. The act required insurers to offer terrorism insurance to their commercial policyholders, preserved state regulation of this type of insurance, and directed the Secretary of the Treasury to administer a program for sharing terrorism losses. Once certain conditions were met, the initial program covered 90% of insurer losses up to $100 billion each year.

Responding to concerns that the three-year program was too limited to allow the private sector to develop the capacity to insure terrorism risk, the 109th Congress passed S. 467, the Terrorism Risk Insurance Extension Act of 2005 (TRIEA), by a vote of 371-49 (Roll no. 612) and it became Public Law No: 109-144.

	YEAS	NAYS	PRES	NV
REPUBLICAN	178	46		5
DEMOCRATIC	192	3		7
INDEPENDENT	1			
TOTALS	**371**	**49**		**12**

S. 467 extended the program for two years leaving the program essentially intact while increasing the private sector's exposure to terrorism risk through a higher trigger, higher deductibles, greater industry loss sharing and exclusion of certain lines of insurance.

With less than four months remaining in the extended program, concerns are again being expressed that the private market will be unable to provide terrorism insurance without a government backstop. TRIA extension legislation (H.R. 2761) has been introduced in the House and hearings have been held, but legislation has not been introduced in the Senate.

TRIA's current program:

Duration: Originally 3 years, extended for 2 more years until December 31, 2007.
Coverage: Applies only to an act of foreign terrorist attacks that cause certain US commercial property/casualty insurance loss, excluding federal crop insurance, private mortgage insurance, title insurance, financial guaranty insurance, medical malpractice insurance, health or life insurance, flood insurance, reinsurance, commercial automobile insurance, burglary and theft insurance, surety insurance, professional liability insurance (except for directors and officers liability), and farm owners multiple peril insurance.
Trigger: The Federal backstop is not triggered unless a terrorist attack causes more than $100 million in covered losses (increased from $5 million in years 1-3 and $50 million in year 4).
Deductible: Insurers must absorb a deductible equal to 20% of their annual premiums before being eligible for the Federal backstop; the deductible was increased each year from 7% to 10%, 15%, 17.5%, and 20%.

Taxpayer Recoupment: The industry must absorb, through deductibles, co-shares and surcharges $27.5 billion; this was increased from $10 billion to $12.5 billion, $15 billion, and $25 billion.
Program Cap: The Federal backstop and insurer payments are halted at $100 billion in Federal payouts, with the implication that Congress would create a new program at that point.
Studies: The Presidential Working Group (PWG) reported on TRIA in 2006, opposing the inclusion of group life and raising concerns regarding foreign terrorist attacks causing nuclear, biological, chemical, and radiological damage (NBCR).

SUMMARY

Termination of Program (Section 2)

- Reauthorizes TRIA for 15 years; beginning December 31, 2007 and ending December 31, 2022.

Revision of Terrorism Insurance Program (Section 3)

- Incorporates domestic terrorism acts into TRIA and includes farm owners multiple peril insurance in the definition of property casualty insurance.

- Preempts state prior approval of rate and form requirements in the first year of the extension for all covered acts, recognizing the new domestic terrorism coverage mandate

- Establishes that the term ‘act of terrorism’ means any act that is certified by the Secretary of Treasury, in concurrence with the Secretary of State, the Secretary of Homeland Security, and the Attorney General of the United States –
    - to be an act of terrorism;
    - to be a violent act or an act that is dangerous to human life, property or infrastructure;
    - to have resulted in damage within the United States, or outside of the United States in the case of an air carrier or vessel or the premises of a United States mission; and
    - to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

- Establishes that no act is certified by the Secretary as an act of terrorism if –
    - the act is committed as part of the course of a war declared by the Congress, except that this clause does not apply with respect to any coverage for workers’ compensation; or
    - property and casualty insurance and group life insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

- Authorizes the Secretary of Treasury, in concurrence with the Secretary of State, the Secretary of Homeland Security, and the Attorney General of the United States, to determine whether or not the act of terrorism meets the definition of NBCR terrorism. The determination is final and is not subject to judicial review.

**Note: the term 'NBCR terrorism' means an act of terrorism that involves nuclear, biological, chemical, or radiological reactions, releases, or contaminations, to the extent any insured losses result from any such reactions, releases, or contaminations.*

- Applies 'amount at risk' as the metric for determining insurer deductibles and recoupment amounts, instead of prior year premiums, for group life insurance –
    - 'Amount at risk' with respect to group life is defined as face amount less statutory policy reserves.
    - 'Amount at risk' is used instead of premium for group life because group life premium takes into account different risks that would not be appropriate for or correlated with terrorism risk, including age and occupation.

- Establishes a 3.5 percent insurer deductible for NBCR events that increases by 0.5 percentage point each year, and applies a 15 percent co-payment above the deductible up to the program cap, with a step-down mechanism that decreases the copayment for larger events.

- Establishes that if industry insured losses exceed $1 billion, the Secretary of Treasury may combine insured losses resulting from two or more certified acts of terrorism occurring during the Program Year in the same geographic area, so that the insurer is permitted to combine insured losses from the acts of terrorism for purposes of satisfying their deductible.

Note: the term 'property and casualty insurance' means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance; and* ***does not include* *–*
- *Federal crop insurance or any other type of crop or livestock insurance that is privately issued or reinsured;*
- *Private mortgage insurance or title insurance;*
- *Financial guaranty insurance issued by monocline financial guaranty insurance corporations;*
- *Insurance for medical malpractice;*
- *Health or life insurance, including group life insurance;*
- *Flood insurance provided under the National Flood Insurance Act of 1968;*
- *Reinsurance or retrocessional reinsurance;*
- *Commercial automobile reinsurance;*
- *Burglary and theft insurance;*
- *Surety insurance; or*
- *Professional liability insurance.*

- Allows small insurers (those earning less than $50 million in direct earned premiums) to apply for an opt-out of the NBCR make available mandate, should they meet specific proof of insolvency criteria, for no longer than two years. The Secretary of Treasury is authorized to extend exemption for a period of no longer than 2 years.

- Establishes that if a person chooses not to purchase a policy with terrorism coverage, an insurer may exclude coverage for all losses from acts of terrorism, including acts of NBCR terrorism, except for State workers' compensation and other compulsory insurance law requiring coverage of risks, or an insurer may offer other options for coverage that differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

- Requires insurers to make available NBCR coverage on the same terms and conditions, but postpones implementation of NBCR mandatory offer requirements until the renewal or purchase of a TRIA-covered policy after January 1, 2009.

- For NBCR, preempts state form requirements for two years and rate requirements for three years, to allow insurers time to adjust to this mandate.

- Prohibits life insurance companies from denying or reducing coverage based on past or future lawful foreign travel unless the insured, with a year, plans to travel to a place 1) the Director of the CDC has issued a highest level alert or warning due to a serious health-related condition or, 2) where there is an ongoing military conflict involving armed forces of a sovereign nation other than the nation to which the insured person is traveling, or 3) that the insurer has specifically designated in the terms of the life insurance policy and the insurer has made a good-faith determination that a serious, unlawful situation is ongoing, and that the credibility of the information by which the insurer can verify the death of the insured person is compromised.

- Establishes that the Federal share of compensation paid by the Treasury for conventional terrorism insured losses of an insurer during any additional Program Year is equal to the sum of 85% of the portion of insured losses that exceeds the applicable insurer deductible required to be paid during the Program Year, and does not result in aggregate industry insured losses during the Program Year exceeding $100 billion.

- Establishes the Federal share of compensation under the Program paid by the Secretary of the Treasury for insured losses of an insurer resulting from NBCR terrorism during any additional Program Year.

**Note: the term 'qualified NBCR losses' means, with respect to insured losses of an insurer resulting from NBCR terrorism during an additional Program Year, that portion of the amount of insured losses that exceeds the applicable deductible required to be paid during the Program Year*

- Establishes that the TRIA program is triggered if a certified act of terrorism occurs resulting in at least $50 million in insured losses.

- Establishes a limitation on compensation for group life insurance by capping the level of Federal exposure at $1 million per certificate holder of any group life insurance policy.

- Provides additional legal certainty to insurers by:
  - Establishing that the Treasury will cease making payments during a particular program year, when the amount of the Federal share reaches $100 billion, and no insurer will be liable for any portion of aggregate insured losses above $100 billion.
  - Clarifying annual cap language to ensure that the program cap takes into consideration workers' comp and other State mandatory coverage laws.
  - Requires that a disclosure regarding the cap be included in all property casualty and group life insurance policies.
  - Provides a notice to industry when the Federal share equals or exceeds $80 billion during a Program Year to allow for a transition period for industry to make preparations as the cap is neared to cease insurer payments and to unwind and halt the claims process once the cap is pierced.
  - Clarifies that the limits of an insurer's financial exposure are confined to its applicable deductible and co-payments, and provides that claims concerning these limits would be consolidated in a federal court.
  - Reimburses insurers for payments exceeding the cap that are made before the Treasury notice that the cap has been pierced and for payments exceeding the cap ordered by a court, provided that insurers make a good-faith defense effort. Treasury has the right to intervene in such court proceedings.
  - Modifies TRIA's purposes to include language that the law provides finite liability limits for terrorism insurance losses for insurers and the government.

- Improves implementation around the $100 billion cap by:
  - Requiring Treasury to notify Congress and the industry –
    - Within 10 days after the event if it is likely to cause the piercing of the cap.
    - When losses reach $80 billion.
    - Again when losses reach $100 billion.
  - Mandating that Treasury finalize regulation regarding pro rata allocations within 120 days of enactment.

- Authorizes the Treasury to require full taxpayer payback after an event or submit a report to Congress explaining why full recoupment is not appropriate. Amounts are to be recouped as a policyholder surcharge, as described below.

**Note: This means the Secretary must pursue full taxpayer payback, but has <u>complete and final authority to suspend full payback based on market conditions and report to Congress why recoupment is not possible. If the Secretary does not require full mandatory recoupment, recoupment will be $27.5 billion, as in current law.</u>*

- Establishes that any amount established by the Secretary of Treasury as a terrorism loss risk-spreading premium for recoupment –
  - Is imposed as a policyholder premium surcharge on property and casualty insurance policies and group life insurance policies in force after the date of such establishment;
  - Begins with such period of coverage during the year as the Secretary of Treasury determines appropriate; and
  - Be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy and a percentage of the amount at risk for group life insurance coverage under the policy.

- Clarifies that a terrorism loss risk-spreading premium may not exceed, on an annual basis –
  - The amount equal to 3% of the premium charged under the policy, with respect to property and casualty insurance; and
  - The amount equal to 0.0053% of the amount at risk under the policy, with respect to group life insurance.
- Allows adjustment for urban and smaller commercial and rural areas and different lines of insurance, requiring the Secretary of Treasury to determine the method, manner, and amount of imposing terrorism risk-spreading premiums, and to take into consideration –
  - The economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability to lease space and commercial insurance within urban areas;
  - The risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and
  - The various exposures to terrorism risk for different lines of insurance.

- Authorizes the Secretary, in consultation with the NAIC or the appropriate State regulatory authority, to apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if the application is determined before an act of terrorism occurs in which an entity incurs an insured loss.

- Requires the Secretary of the Treasury to annually adjust the program triggers and cap based on a percentage change in an appropriate index, so that these numbers do not decline in real terms over time.

- Establishes that upon enactment of this Act and ending on December 31, 2009, forms for property and casualty insurance, and group life insurance, covered by this title and providing coverage for NBCR terrorism that are filed with any state, where NBCR coverage was not previously required, is not subject to prior approval or a waiting period under any State law that would otherwise be applicable.

- Establishes that upon the enactment of this Act and ending on December 31, 2010, rates for property and casualty insurance, and group life insurance, covered by this title and providing coverage for NBCR terrorism that are filed with any state, where NBCR coverage was not previously required, is not subject to prior approval or waiting period under any State law that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as inadequate or unfairly discriminatory.

- Clarifies that nothing in this Act is construed to prohibit, restrict, or otherwise limit an insurer from entering into an arrangement with another insurer to make available coverage for any portion of insured losses to fulfill requirements.

- Requires the Secretary of Treasury to develop, in consultation with the NAIC, minimum financial solvency standards and other standards the Secretary determines appropriate with respect to arrangements. Nothing in this subsection is construed to establish any legal partnership.

<u>Terrorism Buy-Down Fund (Section 4)</u>

- Requires the Secretary of Treasury to establish a Terrorism Buy-Down Fund (in this section referred to as the 'Fund') that makes available additional terrorism coverage for the insured losses of insurers that is available for purchase by insurers on a voluntary basis.

- Authorizes any insurer to purchase deductible, co-share, and pre-trigger buy-down coverage through the Fund by making an election, in advance, to treat some or all of the premiums as fee charges for the Program imposed by the Secretary and remitting the amounts to the Fund.

- Establishes that an insurer may not purchase buy-down coverage in an amount greater than the lesser of the highest amount specified in 103(e)(1)(C) – Program Triggers, and the insurer's one-in-one-hundred-year risk exposure to acts of terrorism.

- Establishes that the Fund will provide the buy-down coverage to an insurer for losses for acts of terrorism, without application of the insurer deductible and in addition to any otherwise payable Federal share of compensation.

- Clarifies that the buy-down coverage that is payable to an insurer for qualifying losses is the aggregate of the insurer's buy-down coverage premiums plus interest accrued on such amounts.

- Establishes that for the purposes of this section, qualifying losses are insured losses by an insurer that are not excess losses and that do not include amounts for which

Federal financial assistance is received, notwithstanding any limits otherwise applicable regarding program triggers or regarding insurer deductibles.

- Authorizes an insurer to use any buy-down coverage payments received to satisfy –
  - The applicable insurer deductibles for the insurer;
  - The portion of the insurer's losses that exceed the insurer deductible but are not compensated by the Federal share; and
  - The insurer's obligations to pay for insured losses if the Program trigger is not satisfied.

- Establishes that buy-down coverage does not reduce federal co-share.

- Allows an insurer to sell its rights to buy-down coverage from the Fund to another insurer as part of or to avoid insolvency or as part of a merger, sale, or major reorganization.

- Authorizes the Secretary of the Treasury to borrow funds from the Fund to offset, in whole or in part, the Federal share of compensation provided to all insurers under the Program, except that –
  - The Fund will always immediately provide any buy-down coverage payments required; and
  - Any amounts borrowed must be replaced with appropriate interest.

- Authorizes the Secretary of the Treasury to establish voluntary risk-sharing mechanisms for insurers purchasing buy-down coverage from the Fund to pool their reinsurance purchases and otherwise share terrorism risk.

- Establishes that upon termination of the Program, and subject to the Secretary's continuing authority to adjust claims in satisfaction under the Program, the Secretary will provide that the Fund will become a privately-operated mutual terrorism reinsurance company owned by the insurers that have submitted buy-down premiums in proportion to such premiums minus any buy-down coverage payments received.

<u>Analysis and Study (Section 5)</u>

- Authorizes the Secretary, in consultation with the NAIC, representatives of the insurance industry, the securities industry, and of policy holders, to perform an analysis regarding long-term availability and affordability of insurance or terrorism risk in the private marketplace, including coverage for –
  - Property casualty insurance;
  - Group life insurance;
  - Workers' compensation;
  - Nuclear, biological, chemical, and radiological events; and
  - Commercial real estate.

- Requires the Secretary to submit a report and testify on market conditions every 2 years to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.

- Establishes a Commission on Terrorism Risk Insurance composed of 21 members that includes:
  - The Secretary of Treasury
  - One State insurance commissioner designated by the NAIC
  - 15 members appointed by the President that include a representatives from across the industry
  - 4 members, who will serve as liaisons to the Congress, that include 2 members jointly selected by the Chairman and Ranking Member of the House Committee on Financial Services, and 2 members jointly selected by the Chairman and Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs.

- Authorizes the Commission to identify and make recommendations and to specifically evaluate the utility and viability of proposals aimed at improving the availability of insurance against terrorism risk in the private marketplace.

- Requires the Commission to submit 2 reports to Congress proposing long-term solutions to covering terrorism risk at 5 years (interim) and 8 years (final) out.

ADDITIONAL INFORMATION

"The Administration believes that the Terrorism Risk Insurance Act (TRIA) should be phased out in favor of a private market for terrorism insurance. The Administration strongly opposes efforts to expand the Federal government's role in terrorism reinsurance. The most efficient, lowest cost, and most innovative methods of providing terrorism risk insurance will come from the private sector. Unfortunately, H.R. 2761 effectively makes TRIA permanent, increases the role of the Federal government, and expands the scope of coverage well beyond the point where it is needed. <u>Therefore, if H.R 2761 as reported were presented to the President, his senior advisors would recommend that he veto the bill</u>." (Statement of Administration Policy, 9/17/2007)

COST

The Congressional Budget Office (CBO) analysis of the cost of H.R. 2761 included the following caveat: "There is no reliable way to predict how much insured damage terrorists might cause in any specific year. Rather, CBO's estimate of the cost of financial assistance provided under H.R. 2761 represents an expected value of payments from the program-a weighted average that reflects industry experts' opinions of various outcomes ranging from zero damages up to very large damages resulting from possible future terrorist attacks. The expected value can be thought of as the amount of an insurance premium that would be necessary to just offset the government's losses from providing this insurance, although firms do not pay any premium for the federal assistance offered by TRIA.

On this basis, CBO estimates that enacting H.R. 2761 would increase direct spending by $3.7 billion over the 2008-2012 period and by $10.4 billion over the 2008-2017 period. An additional $13.7 billion would be spent after 2017."

The full text of the CBO cost estimate for H.R. 2761 can be found here: H.R. 2761 Cost Estimate.

AMENDMENTS

(Below are the summaries of the amendments that were made in order by the Rules Committee and may be offered on the floor of the House of Representatives)

1) Rep. Barney Frank (D-MA): (Manager's Amendment) The manager's amendment clarifies the certification process for acts of NBCR (nuclear, biological, chemical, or radiological) terrorism, applies the reset mechanism to the NBCR deductible, and provides that the Consumer Price Index will be used to adjust for inflation the dollar amounts used in TRIA. The amendment also makes technical and conforming changes.

2) Rep. Stevan Pearce (R-NM): The amendment raises the deductible set at 5% above $1,000,000,000 by 1% each program year, rather than by .5% as the bill is written.

Self-Enacting Amendment that will be considered approved upon adoption of the Rule

The amendment would ensure that the bill complies with the new PAYGO requirements. It would require the enactment of a joint resolution to permit Federal compensation under the Terrorism Risk Insurance Act of 2002. The joint resolution, approving a certification by the Secretary of Treasury (in concurrence with the Secretaries of State and Homeland Security, and the Attorney General) that there has been an act of terrorism, would be considered by Congress under fast-track procedures.

STAFF CONTACT

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